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insanity was, at most but a monomania upon another topic, which could not exempt the prisoner from responsibility for the homicide.

The judge will instruct the jury in regard to the principles of law which govern this subject, when all the facts shall have been heard. At present, the discussion is premature.

It is therefore ordered, adjudged and decreed that the judgment of the Court below be reversed, the verdict of the jury set aside, and the cause remanded for a new trial according to law.

In the Supreme Court of Texas.

JOHN F. JORDAN vs. F. A. POLK.¹

1. Special administration,—*Power of the County Courts to appoint.*—The County Courts of this State may grant letters of limited administration upon the estates of deceased persons. This power existed under the Act of 1794, ch. 1, § 47, and is clearly created and defined as to the estates of non-resident decedents, by the acts of 1842, chs. 69 and 165. But such special administration does not prevent a grant of the general administration in a *proper case* to a different person; and the two administrations may well subsist together.
2. Same,—*Rights of next of kin and creditors.*—A limited administration, as contemplated by the laws of this State, is not within the letter or spirit of the law prescribing to whom the general administration shall be granted. The next of kin or creditors cannot claim a right to special administration, if occupying an antagonistic relation to those who represent the deceased. So, where the deceased, a non-resident, had no estate in the limits of this State, except the subject of a suit which he was prosecuting at the time of his death against his brother, it was no error in the County Court to refuse the general or special administration to such brother, and confer the special administration upon an indifferent person.

A suit was instituted in the Chancery Court at Columbia, by James F. Jordan against John F. Jordan and others. Pending this suit, James F. Jordan, the complainant, died in Texas, of which State he was a citizen. His interest in this suit was the only estate he left within this State. His counsel applied to the County Court of Maury for letters of special administration to carry on the suit, and recommended the defendant in error for said

¹ Sneed's Texas Reports, vol. 1, p. 430. We are indebted to one of the learned counsel engaged in this cause for an early sheet of this report in advance of publication.—*Eds. A. L. Reg.*

appointment, who was neither of kin nor a creditor of the deceased. This application was contested by John F. Jordan, one of the defendants in the bill, who claimed the general administration as next of kin to the deceased. The County Court refused said application of John F. Jordan, and appointed the defendant in error special administrator to carry on the suit. Jordan appealed to the Circuit, where Judge Martin affirmed the action of the County Court, whereupon Jordan appealed in error to this Court.

U. S. Frierson, for the plaintiff in error :

1. The next of kin of an intestate by law, and as a matter of right, is entitled to the administration of the estate. 1 Meigs' Dig. 20.

2. The next of kin cannot be deprived of this right unless there are more claimants than one ; then the Court may elect to whom the administration shall be committed. 1 Meigs' Dig. 20 ; Martin & Yerger, 43, 45.

3. But if the applicant is simply opposed by the other next of kin, it would be error in the Court to refuse to commit it to the applicant. Martin & Yerger, 43, 45.

4. But this is an application for a special administration upon the estate of a non-resident intestate to prosecute a suit, and is not governed by the general law. We deny that the Court can appoint any such *special administrator* upon the estate of a non-resident.

1. By the Act of 1841, ch. 96, § 1, the County Courts of this State are authorized to appoint administrators generally upon the estates of non-resident intestates, without saying to whom.

2. The Act of 1842, ch. 165, § 1, declares that letters of administration shall be granted upon application of any person interested, his or her agent or attorney, showing that the legislature intended to secure the right to the next of kin, as heretofore.

3. The administration should not as a matter of justice to our own citizens, be a special one ; because, if it were, such administrator could not be sued by creditors, and the assets which should be appropriated to the payment of debts would be collected and transferred to a foreign jurisdiction, and domestic creditors sent there to

collect their demands, when it might have been done here. 8 Humphreys, 558.

4. The only remaining objection to appointing the next of kin, is, that he is the debtor of the estate. This is no legal objection, for his indebtedness would be assets of the estate, for which he and his securities would be liable; and this is an answer to the objection.

W. S. Flippen, for the defendant in error :

There may be several different administrators, general, limited, *pendente lite*, and special. The word special, embraces all other administrators save the three first named. One may be executor for a particular thing, Wentw. on Ex'rs, p. 12, and so it necessarily follows, one may be administrator for a particular thing, for the law in this respect is the same. "And where there is no general representative an administrator or special representative limited to the subject of the suit," may be appointed. See Williams' Ex'rs, vol. 1, p. 329.

We assume the ground that Jordan, upon no principle, could be administrator in this case. He could be neither general or special administrator. Had the Court appointed him, he would have been appointed to prosecute a suit against himself. This was the whole object of administration; and in the language of Mr. Justice Buller, "it is impossible to say a man can sue himself." 1 Williams' Ex'rs, 779, where is cited *Moffett vs. Van Millengen*; 2 Bos. & Pull. 124, note c.; 2 Chitty, 539; and *Fitzgerald vs. Boehm*, C. B. Moore.

If it be insisted that the Court erred in not appointing a *general* instead of a *special* administrator, (which is not admitted,) still some one should have been offered other than Jordan, and the record does not show that such was the fact. Polk was the only other person offered; he was unexceptionable in every particular, as much as any *next of kin* or *other most lawful friend* that might have been presented. The Court, using its discretionary power, we insist, acted properly in refusing to appoint Jordan general administrator, and in appointing Polk.

The opinion of the Court was delivered by

McKINNEY, J.—This was an appeal from an order of the County Court of Maury, granting a limited administration upon the estate of James F. Jordan, who, at the time of his death was a non-resident.

It appears from the record that James F. Jordan died intestate in Texas, of which state he was a resident. Previous to and at the time of his death, there was pending in the Chancery Court at Columbia, in this State, a suit in which he was a complainant, and the plaintiff in error was the principal defendant. The intestate had no other property or assets within the State at the time of his death, or at the time of the grant of administration, except the subject matter of said suit. For the sole purpose of prosecuting this suit to a final termination, the counsel of the intestate applied to the County Court of Maury, in which county the Chancery Court in which this suit was pending, held its sessions, to have a limited administration granted upon the intestate's estate, and nominated the defendant in error, who was not of kin to the deceased, nor a creditor of his estate, nor interested in the suit. The plaintiff in error, who is a brother of the intestate, appeared and claimed, as next of kin, to have a general administration upon the estate of the intestate, committed to him. But the Court refused this application, because he was the principal defendant in said suit, against whom a decree was sought, and had an interest in opposition to that of the representatives and distributees of the intestate's estate, and proceeded to grant a limited or special administration to the defendant in error. An appeal was presented to the Circuit Court, and the judgment being affirmed, the case is brought here by an appeal in error.

The first error insisted upon, is, in the grant of a limited administration. It seems to be thought that, under our law this is not admissible, and that none other than a general administration can be granted; we do not think so. It is well settled in England, that such limited administrations may be granted. The grant may be limited either to certain specific effects of the deceased, or to a certain specific purpose, as to filing a bill, or carrying on proceedings

in Chancery. 1 Williams on Ex'rs, (ed. of 1849,) 431; 1 Hagg. 93; 2 Hagg. 62; 3 Phillimore, 315.

And it is now well settled, that if such limited administrator is made a party to the suit, the estate of the intestate is properly represented, so as to enable the Court to proceed in the cause, and a decree obtained against such an administrator will be binding on any general administrator. 1 Williams on Ex'rs, 435; 3 Hare, 199, 208.

But such a limited or special administration does not prevent a grant of the general administration, in a proper case, to a different person. The party entitled to the general grant might take what is called an administration *cæterorum* or an administration of all the other property or assets of the intestate. And the two administrations may well subsist together. 1 Williams on Ex'rs, 431, 436.

It was held in the case of *McNairy vs. Bell*, 6 Yerger, 302, that a limited administration might be granted by the County Court. This was allowable under our law prior to the act of 1842, ch. 69, and 165, which expressly authorizes a limited administration upon the estate of a person, who, at the time of his death, was a non-resident, where the decedent left any estate, real or personal, in this State, or where any suit in which his estate is interested, is to be bought, prosecuted, or defended; or where any citizen of this State, or other person, having property, *choses in action*, or debts due them within this State, was indebted to such decedent at the time of his death.

The authority of the County Court to make such limited appointment, is, therefore placed beyond all question. And in the present case there was no pretence for a general administration, as there was no assets within the jurisdiction of this State. Secondly, it is urged, that admitting the regularity of a limited grant of administration, the plaintiff in error as next of kin, was entitled to be appointed; and, that therefore, in the appointment of the defendant, there was error. This position is equally as untenable as the preceding one. In England, the Ecclesiastical Courts would not put a litigant party in possession of the property, or subject of the suit, by

granting to him a limited administration pending the suit, but to some one presumed to be indifferent. 1 Williams on Ex'rs, 410. Nor, under our law, can either the next of kin, or creditors, claim a right to such appointment, if occupying an antagonistic relation to those who represent the deceased party. A temporary administration of this sort is not within the letter or spirit of the law prescribing to whom the general administration shall be committed; and it would seem singularly absurd to require that such special administration should be granted to a party whose interest, and perhaps whose first act would be to defeat the very purpose of the grant. Such is not the law.

There is no error in the record, and the judgment is affirmed.

Supreme Court of Texas. Galveston, 1854.

EDWARD RUSSELL'S HEIRS vs. HARVEY RANDOLPH.

1. A grant of land fraudulently obtained, is void *ab initio*, and no title passes to the grantee, nor is the land separated from the public domain, but remains subject to be located upon a valid certificate.
2. Domicil defined and considered.
3. Practice in the Land Office in Texas.

Allen & Hale, for Plaintiff in Error.

H. Yoakum, for Defendant in Error.

The opinion of the Court was delivered by

LIPSCOMB, J.—Edward Russell, the ancestor of the plaintiff in error, came to Texas some time in 1834, and the 21st day of August, 1835, obtained a grant for one league of land in the present county of Montgomery, and shortly thereafter left for the State of Maine, avowedly for the purpose of bringing out his family to settle upon the land conceded to him, and shortly after reaching his family in the State of Maine, where they had remained whilst he was in Texas, he died. In 1841 or '42, Mr. Norton with his family, his wife being a daughter of Edward Russell, cultivated and made a crop on the land, and they have resided ever since in the State of Texas.